

**1-04 SCOPE OF THE WORK****1-04.1 Intent of the Contract**

The intent of the Contract is to prescribe a complete Work. Omissions from the Contract of details of Work that are necessary to carry out the intent of the Contract shall not relieve the Contractor from performing the omitted Work.

**1-04.1(1) Bid Items Included in the Proposal**

The Contractor shall provide all labor, materials, tools, equipment, transportation, supplies, and incidentals required to complete all Work for the items included in the Proposal.

**1-04.1(2) Bid Items Not Included in the Proposal**

When the Contract specifies Work that has no Bid item, and the Work is not specified as being included with or incidental to other Bid items, an equitable adjustment will be made in accordance with [Section 1-04.4](#) unless that Work is customarily considered as incidental to other items.

**1-04.2 Coordination of Contract Documents, Plans, Special Provisions Specifications, and Addenda**

The complete Contract includes these parts: the Contract Form, Bidder's completed Proposal Form, Contract Plans, Contract Provisions, standard Specifications, Standard Plans, Addenda, various certifications and affidavits, supplemental agreements, change orders, and subsurface boring logs (if any). These parts complement each other in describing a complete Work. Any requirement in one part binds as if stated in all parts. The Contractor shall provide any Work or materials clearly implied in the Contract even if the Contract does not mention it specifically.

Any inconsistency in the parts of the Contract shall be resolved by following this order of precedence (e.g., 1 presiding over 2, 3, 4, 5, 6, and 7; 2 presiding over 3, 4, 5, 6, and 7; and so forth):

1. Addenda,
2. Proposal Form,
3. Special Provisions,
4. Contract Plans,
5. Amendments to the Standard Specifications,
6. Standard Specifications, and
7. Standard Plans.

On the Contract Plans, Working Drawings, and Standard Plans, figured dimensions shall take precedence over scaled dimensions.

This order of precedence shall not apply when Work is required by one part of the Contract but omitted from another part or parts of the Contract. The Work required in one part must be furnished even if not mentioned in other parts of the Contract.

If any part of the Contract requires Work that does not include a description for how the Work is to be performed, the Work shall be performed in accordance with standard trade practice(s). For purposes of the Contract, a standard trade practice is one having such regularity of observance in the trade as to justify an expectation that it will be observed by the Contractor in doing the Work.

In case of any ambiguity or dispute over interpreting the Contract, the Engineer's decision will be final as provided in [Section 1-05.1](#).

### **1-04.3 Vacant**

### **1-04.4 Changes**

The Engineer reserves the right to make, at any time during the Work, such changes in quantities and such alterations in the Work as are necessary to satisfactorily complete the project. Such changes in quantities and alterations shall not invalidate the Contract nor release the Surety, and the Contractor agrees to perform the Work as altered. Among others, these changes and alterations may include:

1. Deleting any part of the Work,
2. Increasing or decreasing quantities,
3. Altering Specifications, designs, or both,
4. Altering the way the Work is to be done,
5. Adding new Work,
6. Altering facilities, equipment, materials, services, or sites, provided by the Contracting Agency.
7. Ordering the Contractor to speed up or delay the Work.

The Engineer will issue a written change order for any change unless the remainder of this section provides otherwise.

If the alterations or changes in quantities significantly change the character of the Work under the Contract, whether or not changed by any such different quantities or alterations, an adjustment, excluding loss of anticipated profits, will be made to the Contract. The basis for the adjustment shall be agreed upon prior to the performance of the Work. If a basis cannot be agreed upon, then an adjustment will be made either for or against the Contractor in such amount as the Engineer may determine to be fair and equitable. If the alterations or changes in quantities do not significantly change the character of the Work to be performed under the Contract, the altered Work will be paid for as provided elsewhere in the Contract. The term *significant change* shall be construed to apply only to the following circumstances:

- A. When the character of the Work as altered differs materially in kind or nature from that involved or included in the original proposed construction or
- B. When an item of Work, as defined elsewhere in the cContract, is increased in excess of 125-percent or decreased below 75-percent of the original Contract quantity. For the purpose of this section, an item of Work will be defined as any item that qualifies for adjustment under the provisions of [Section 1-04.6](#).

For Item 1, an equitable adjustment for deleted Work will be made as provided in [Section 1-09.5](#).

For Item 2, if the actual quantity of any item, exclusive of added or deleted amounts included in agreed change orders, increases or decreases by more than 25-percent from the original Plan quantity, the unit Contract prices for that item may be adjusted in accordance with [Section 1-04.6](#).

For any changes except Item 1 (deleted Work) or Item 2 (increasing or decreasing quantities), the Engineer will determine if the change should be paid for at unit Contract price(s). If the Engineer determines that the change increased or decreased the Contractor's costs or time to do any of the Work including unchanged Work, the Engineer will make an equitable adjustment to the Contract. The equitable adjustment will be by agreement with the Contractor. However, if the parties are unable to agree, the Engineer will determine the amount of the equitable adjustment in accordance with [Section 1-09.4](#) and adjust the time as the Engineer deems appropriate. Extensions of time will be evaluated in accordance with [Section 1-08.8](#). The Engineer's decision concerning equitable adjustment and extension of time shall be final as provided in [Section 1-05.1](#).

The Contractor shall proceed with the Work upon receiving:

1. A written change order approved by the Engineer, or
2. An oral order from the Project Engineer before actually receiving the written change order.

Changes normally noted on field stakes or variations from estimated quantities, except as provided in subparagraph A or B above, will not require a written change order. These changes shall be made at the unit prices that apply. The Contractor shall respond immediately to changes shown on field stakes without waiting for further notice.

The Contractor shall obtain written consent of the Surety or Sureties if the Engineer requests such consent.

The Contracting Agency has a policy for the administration of cost reduction alternatives proposed by the Contractor. The Contractor may submit proposals for changing the Plans, Specifications, or other requirements of the Contract. These proposals must reduce the cost or time required for construction of the project. When determined appropriate by the Contracting Agency, the Contractor will be allowed to share the savings.

Guidelines for submitting Cost Reduction Incentive Proposals are available at the Project Engineer's office. The actions and requirements described in the guidelines are not part of the Contract. The guidelines requirements and the Contracting Agency's decision to accept or reject the Contractor's proposal are not subject to arbitration under the arbitration clause or otherwise subject to litigation.

#### **1-04.4(1) Minor Changes**

Payments or credits for changes amounting to \$5,000 or less may be made under the Bid item "Minor Change". At the discretion of the Contracting Agency, this procedure for Minor Changes may be used in lieu of the more formal procedure as outlined in [Section 1-04.4](#), Changes.

The Contractor will be provided a copy of the completed order for Minor Change. The agreement for the Minor Change will be documented by signature of the Contractor, or notation of verbal agreement. If the Contractor is in disagreement with anything required by the order for Minor Change, the Contractor may protest the order as provided in [Section 1-04.5](#).

Payments or credits will be determined in accordance with [Section 1-09.4](#). For the purpose of providing a common Proposal for all Bidders, the Contracting Agency has entered an amount for "Minor Change" in the Proposal to become a part of the total Bid by the Contractor.

**1-04.5 Procedure and Protest by the Contractor**

The Contractor accepts all requirements of a change order by: (1) endorsing it, (2) writing a separate acceptance, or (3) not protesting in the way this section provides. A change order that is not protested as provided in this section shall be full payment and final settlement of all claims for Contract time and for all costs of any kind, including costs of delays, related to any Work either covered or affected by the change. By not protesting as this section provides, the Contractor also waives any additional entitlement and accepts from the Engineer any written or oral order (including directions, instructions, interpretations, and determinations).

If in disagreement with anything required in a change order, another written order, or an oral order from the Engineer, including any direction, instruction, interpretation, or determination by the Engineer, the Contractor shall:

1. Immediately give a signed written notice of protest to the Project Engineer or the Project Engineer's field Inspectors before doing the Work;
2. Supplement the written protest within 7-calendar days with a written statement and supporting documents providing the following:
  - a. The date and nature of the protested order, direction, instruction, interpretation or determination;
  - b. A full discussion of the circumstances which caused the protest, including names of persons involved, time, duration and nature of the Work involved, and a review of the Plans and Contract Provisions referenced to support the protest;
  - c. The estimated dollar cost, if any, of the protested Work and a detailed breakdown showing how that estimate was determined; and
  - d. An analysis of the progress schedule showing the schedule change or disruption if the Contractor is asserting a schedule change or disruption; and
  - e. If the protest is continuing, the information required above shall be supplemented upon request by the Project Engineer until the protest is resolved.

Throughout any protested Work, the Contractor shall keep complete records of extra costs and time incurred. The Contractor shall permit the Engineer access to these and any other records related to the protested Work as determined by the Engineer.

The Engineer will evaluate all protests provided the procedures in this section are followed. If the Engineer determines that a protest is valid, the Engineer will adjust payment for Work or time by an equitable adjustment in accordance with [Section 1-09.4](#). Extensions of time will be evaluated in accordance with [Section 1-08.8](#). No adjustment will be made for an invalid protest.

If the Engineer determines that the protest is invalid, that determination and the reasons for it will be provided in writing to the Contractor. The determination will be provided within 14-calendar days after receipt of the Contractor's supplemental written statement described in item 2 above, unless additional information is needed for the Engineer to make a decision.

If the Contractor does not accept the Engineer's determination then the Contractor shall pursue the dispute and claims procedures set forth in [Section 1-09.11](#). In spite of any protest or dispute, the Contractor shall proceed promptly with the Work as the Engineer orders.

By failing to follow the procedures of this [Section 1-04.5](#) and [Section 1-09.11](#), the Contractor completely waives any claims for protested Work.

**1-04.6 Variation in Estimated Quantities**

Payment to the Contractor will be made only for the actual quantities of Work performed and accepted in conformance with the Contract. When the accepted quantity of Work performed under a unit item varies from the original Proposal quantity, payment will be at the unit Contract price for all Work unless the total accepted quantity of any Contract item, adjusted to exclude added or deleted amounts included in change orders accepted by both parties, increases or decreases by more than 25-percent from the original Proposal quantity. In that case, payment for Contract Work may be adjusted as described herein.

The adjusted final quantity shall be determined by starting with the final accepted quantity measured after all Work under an item has been completed. From this amount, subtract any quantities included in additive change orders accepted by both parties. Then, to the resulting amount, add any quantities included in deductive change orders accepted by both parties. The final result of this calculation shall become the adjusted final quantity and the basis for comparison to the original Proposal quantity.

1. Increased Quantities.

Either party to the Contract will be entitled to renegotiate the price for that portion of the adjusted final quantity in excess of 1.25 times the original Proposal quantity. The price for excessive increased quantities will be determined by agreement of the parties, or, where the parties cannot agree, the price will be determined by the Engineer based upon the actual costs to perform the Work, including reasonable markup for overhead and profit.

2. Decreased Quantities.

Either party to the Contract will be entitled to an equitable adjustment if the adjusted final quantity of Work performed is less than 75-percent of the original Bid quantity. The equitable adjustment shall be based upon and limited to three factors:

- a. Any increase or decrease in unit costs of labor, materials or equipment, utilized for Work actually performed, resulting solely from the reduction in quantity;
- b. Changes in production rates or methods of performing Work actually done to the extent that the nature of the Work actually performed differs from the nature of the Work included in the original plan; and
- c. An adjustment for the anticipated contribution to unavoidable fixed cost and overhead from the units representing the difference between the adjusted final quantity and 75-percent of the original Plan quantity.

The following limitations shall apply to renegotiated prices for increases and/or equitable adjustments for decreases:

1. The equipment rates shall be actual cost but shall not exceed the rates set forth in the AGC/WSDOT Equipment Rental Agreement (referred to in [Section 1-09.6](#)) that is in effect at the time the Work is performed.
2. No payment will be made for extended or unabsorbed home office overhead and field overhead expenses to the extent that there is an unbalanced allocation of such expenses among the Contract Bid items.



3. No payment for consequential damages or loss of anticipated profits will be allowed because of any variance in quantities from those originally shown in the Proposal form, Contract Provisions, and Contract Plans.
4. The total payment (including the adjustment amount and unit prices for Work performed) for any item that experiences an equitable adjustment for decreased quantity shall not exceed 75 percent of the amount originally Bid for the item.

If the adjusted final quantity of any item does not vary from the quantity shown in the Proposal by more than 25-percent, then the Contractor and the Contracting Agency agree that all Work under that item will be performed at the original Contract unit price.

When ordered by the Engineer, the Contractor shall proceed with the Work pending determination of the cost or time adjustment for the variation in quantities.

The Contractor and the Contracting Agency agree that there will be no cost adjustment for decreases if the Contracting Agency has entered the amount for the item in the Proposal form only to provide a common Proposal for Bidders.

#### **1-04.7 Differing Site Conditions (Changed Conditions)**

During the progress of the Work, if preexisting subsurface or latent physical conditions are encountered at the site, differing materially from those indicated in the Contract, or if preexisting unknown physical conditions of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in the Work provided for in the Contract, are encountered at the site, the party discovering such conditions shall promptly notify the other party in writing of the specific differing site conditions before they are disturbed and before the affected Work is performed.

Upon written notification, the Engineer will investigate the conditions and if he/she determines that the conditions materially differ and cause an increase or decrease in the cost or time required for the performance of any Work under the Contract, an adjustment, excluding loss of anticipated profits, will be made and the Contract modified in writing accordingly. The Engineer will notify the Contractor of his/her determination whether or not an adjustment of the Contract is warranted.

No Contract adjustment which results in a benefit to the Contractor will be allowed unless the Contractor has provided the required written notice.

The equitable adjustment will be by agreement with the Contractor. However, if the parties are unable to agree, the Engineer will determine the amount of the equitable adjustment in accordance with [Section 1-09.4](#). Extensions of time will be evaluated in accordance with [Section 1-08.8](#).

If the Engineer determines that different site conditions do not exist and no adjustment in costs or time is warranted, such determination shall be final as provided in [Section 1-05.1](#).

If there is a decrease in the costs or time required to perform the Work, failure of the Contractor to notify the Engineer of the differing site conditions shall not affect the Contracting Agency's right to make an adjustment in the costs or time.

No claim by the Contractor shall be allowed unless the Contractor has followed the procedures provided in [Section 1-04.5](#) and [1-09.11](#).

**1-04.8 Progress Estimates and Payments**

Engineer-issued progress estimates or payments for any part of the Work shall not be used as evidence of performance or quantities. Progress estimates serve only as basis for partial payments. The Engineer may revise progress estimates any time before final acceptance. If the Engineer deems it proper to do so, changes may be made in progress estimates and in the final estimate.

**1-04.9 Use of Buildings or Structures**

The Engineer will decide whether any building or Structure on the Right of Way may remain during the Work and whether the Contractor may use such a building or Structure.

**1-04.10 Use of Materials Found on the Project**

With the Engineer's written approval, the Contractor may use on the project: stone, gravel, sand, other materials from on-site excavation, or timbers removed in the course of the Work. Approval will not be granted if:

1. The excavated materials or timber fail to meet Contract requirements;
2. The excavated materials or timber are required for other use under the Contract;
3. The excavated materials are required for use as Selected Materials under [Section 2-03.3\(10\)](#); or
4. Such use is not in the best interests of the Contracting Agency as determined by the Engineer, whose decision shall be final as provided in [Section 1-05.1](#).

Any material disturbed by, but not used in, the Work shall be disposed of as provided elsewhere in the Contract or as ordered by the Engineer in accordance with [Section 1-04.4](#).

**1-04.11 Final Cleanup**

The Contractor shall perform final cleanup as provided in this section to the Engineer's satisfaction. The Engineer will not establish the Physical Completion Date until this is done. The Highway Right of Way, material sites, and all ground the Contractor occupied to do the Work shall be left neat and presentable. The Contractor shall:

1. Remove all rubbish, surplus materials, discarded materials, falsework, camp buildings, temporary structures, equipment, and debris; and
2. Deposit in embankments, or remove from the project, all unneeded, oversized rock left from grading, surfacing, or paving.

The Contractor shall not remove warning, regulatory, or guide signs unless the Engineer approves.